ARTICLE APPEARED
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THE CHRISTIAN SCIENCE MONITOR
10 July 1978

Snepp and legitimate secrecy

"In order to maintain your secrets, you must have some visible means of control," said Admiral Turner, Director of Central Intelligence, and we agree with him. The question is whether the best means is the kind of contract system which former CIA agent Frank Snepp was found to have violated by a federal district judge. Earlier this year former Director of Central Intelligence William Colby spoke of the inadequacy of the present contract approach. He suggested alternatives worth contemplating in view of the controversial elements of the Snepp case.

This case climaxed last week with Judge Oren Lewis's ruling that Mr. Snepp forfeit his earnings, now said to be some $60,000, from "Decent Interval," his book about CIA operations in Vietnam. Mr. Snepp was also required to obtain CIA approval before trying to publish anything else drawn from his CIA employment.

The judgment was clouded by some of the court proceedings. On grounds that no factual disputes needed to be decided, Judge Lewis had denied Mr. Snepp's request for a jury trial. The judge reportedly left no doubt about his views against Mr. Snepp from the beginning. The net impression was not of American justice at its most judicious.

Judiciousness was needed to weigh Mr. Snepp's alleged breach of contract against the public's need to have information beyond official handouts about agencies operating in its name. One of Mr. Snepp's arguments was that agency officials were already leaking biased versions of what went on in Vietnam while suppressing his request to offer his on-the-spot criticisms of the Saigon evacuation in a document for internal use. He decided to go public and blow the whistle.

The judge's ruling hinged on the narrow basis that Mr. Snepp signed a contract as a CIA employee not to publish without CIA approval. In suing Mr. Snepp for damages, the government did not charge Mr. Snepp with disclosing classified information, which he says he did not do.

This leaves the conclusion that the reason for the suit, and now the penalty against Mr. Snepp, was not that he violated secrecy but that he defied the CIA's contract method of "visible means of control," in Admiral Turner's phrase. The question remains how that control can be maintained on legitimate secrets while not preventing at any level the kind of disclosures whose necessity was one of the lessons of legislative scrutiny of the intelligence agencies. Indeed, Admiral Turner entered on his job with a request to the CIA that information about lapses be passed on to him. At some point the public, too, must be informed.

Which brings us back to Mr. Colby's doubts about the contract system and his suggestions beyond it. He told a Senate subcommittee that the government should not "turn frantically to attempts to enforce contracts or obtain damages." He indicated injunctions were a doubtful remedy in light of Supreme Court decisions against prior restraint of publication.

He proposed a criminal statute narrowly covering only those intelligence sources and methods vulnerable to "termination or frustration" by a foreign power if they were reported. A further limitation would lie in the application of the statute only to those who had specifically promised to keep these secrets. A problem here might arise if such a system were used to create new privileged and unprivileged classes in the CIA.

But the thrust would be away from generalized pre-censorship. There would be judicial adversary proceedings to decide on what material was covered. Reporters could not be prosecuted for having the information. Clearance of manuscripts would be voluntary.

These are not the only possible alternatives. But they suggest an awareness of the need for change highlighted by the Snepp case.